IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

APPEAL UNDER E.S.I. NO. 16 OF 2006

The Regional Director,
Employees' State Insurance Corporation,
Regional Office Goa,
EDC Complex, Plot No. 23,
Patto, Panaji Goa. .... Appellant

Versus

M/s Sesa Goa Ltd.
Represented by its General Manager,
Panchadeep Bhavan, EDC Plot No. 23,
Patto, Panaji Goa. .... Respondent

Shri P.A. Kholkar, Advocate for the Appellant.

Shri G.K. Sardessai with Shri V.A. Palekar, Advocate for the Respondent.

CORAM : **P.V. KAKADE, J**.

DATE : **20th September, 2006**

ORAL JUDGMENT

Heard both sides. Rule. Rule made returnable forthwith.

2. The Regional Director, Employees' State Insurance Corporation has preferred this appeal against the judgment and order passed by the Presiding Officer, E.S.I.C., Panaji allowing the application of the respondent

under Section 75 of the Employees State Insurance Act, holding that the impugned notices dated 17/09/1997 Ref. No. 483, dated 12/02/1998 Ref. No. 858 and 12/02/1998 Ref. No. 860 and order dated 2/07/1998 under E.S.I. are bad and null and void and hence were liable to be quashed and set aside.

3. The respondent is engaged in the business of extraction of iron ore and its export and has mines in various parts of Goa. Respondent has stated that the administrative work in connection with the operations of mines and its export is carried out at its Head Office at Sesa Ghor, 20 EDC Complex, Patto, Panaji, Goa. Respondent also has stated that the employees engaged in the export of ore are less than 20 and has further averred that the act is primarily applicable to the 'factories' and 'Mine' as defined under the Mines Act, 1952, as well as its allied and incidental activity is outside the purview of the ESI Act. Inspite of this position, vide letter dated 3/04/1996, the respondent corporation sought details of the administrative and the sales staff working in connection with mines in form 01. The said letter was followed by letter dated 30/04/1996 and surveyed by the Inspector of the Corporation on 8/05/1996. The proceedings commenced wherein finally it was held that the respondent establishment

was covered and contribution were paid with effect from 1/07/1997. Vide letter dated 2/07/1998 under Section 45-A of ESI Act, the Corporation called upon the respondent to pay the contribution for the period from 1/01/1997 to 30/06/1997. This was followed by filing of application under Section 75 of ESI Act. The designated Court under the said Act, after hearing both the parties, came to the conclusion that the impugned direction was null and void and, therefore, was liable to be quashed and set aside. Hence the present appeal.

4. The substantial question of law is sought to be raised to the effect that whether the decision of the Employees Insurance Court that the notice dated 17/09/1997 and 12/02/1998 are invalid in law relying upon the ratio laid down by the Apex Court in Hyderabad Race Club.

5. Now, it is apparent that the designated Court came to the conclusion that the respondent had proved that the impugned order under Section 45-A of the ESI Act was without jurisdiction and/or in excess of jurisdiction and hence it was liable to be quashed. This finding was recorded mainly on the basis of the ratio laid down by the Apex Court in the Case of ***Employees State Insurance Corporation*** **Versus** ***Hyderabad Race***

Club (2004) 6 SCC 191. I have perused the said Judgment which appears to be correctly followed by the designated Court. The Apex Court has held in para 5 of the Judgment thus :

> "So far as the contention of the Corporation in its appeal CA No.4686 of 1999 is concerned, the same is confined to the question of limiting the liability of the Club for the period after 1985. It is argued that once the applicability of a statute is declared by a court of law, the same applies from the date of the said law being brought into force, hence, in the instant case by the notification of 1975 the Club was brought within the purview of the Act, therefore, the liability of the Club started from the said date. Therefore, in this background, the High Court erred in exonerating the Club from its liability between the period 1975 to 1985."

The judgment of the designated Court also shows that the learned Judge has discussed all the pros and cons of the issues which were urged in order to saddle the respondent with payment of contribution for the impugned period.

6. However, the ratio laid down in the case of ***Hyderabad Race Club*** (supra) is clear enough and therefore has settled the law and hence there is no doubt whatsoever that the reasoning adopted and finding recorded by the designated Court appears to be legal and proper and,

therefore, it would brook no interference. In the result, rule is discharged. The appeal stands dismissed with no order as to costs.

P. V. KAKADE, J.

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